

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SPENCER MUNICIPAL HOSPITAL,

Petitioner,

vs.

PUBLIC EMPLOYMENT  
RELATIONS BOARD,

Respondent,

and

IOWA NURSES ASSOCIATION,

Intervenor.

AA 2421

RULING ON PETITION  
FOR JUDICIAL REVIEW

FILED  
POLK COUNTY, IA  
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JERRY L. YERGEN  
CLERK DISTRICT COURT

On January 13, 1995, Petitioner's Petition For Judicial Review came on for oral argument. Spencer Municipal Hospital (Hospital) was represented by counsel, Edwin McIntosh. The Public Employment Relations Board (Board) was represented by counsel, Jan Berry. The Iowa Nurses Association (INA) was represented by counsel, Susan Logsdon. After reviewing the record and hearing arguments of the parties, the court enters the following ruling.

**STATEMENT OF THE CASE**

This is an action for judicial review of an action of the Public Employment Relations Board (Board) concluding that five hospital employees were ineligible to vote in an election concerning the establishment of a collective bargaining unit. The

election was held on April 22, 1994, and the INA won the election by a vote of 54 to 49. Prior to the election, the eligibility of several employees to vote in the election was contested by the parties. These contested employees were permitted to cast challenged votes in the election.

On May 18, 1994, a hearing was held before the Board on the contested votes and on the Hospital's challenge to a ballot voided by the Board election agent. In a decision dated July 1, 1994, the Board concluded that two additional employees, Gretchen Funk and Jodi Bredlow, were eligible to vote, but that those votes would not have affected the outcome of the election. The Board held that five employees were ineligible to vote. Because the Board concluded it would not affect the outcome of the election, the Board did not address the issue of the voided ballot.

In their petition for judicial review, Petitioner contends the Board action in sustaining the challenges to the eligibility of five Hospital employees was an error of law; arbitrary and capricious; and not supported by substantial evidence. The Petitioner also contends the Court should determine the validity of the voided ballot.

#### **STANDARD OF REVIEW**

On judicial review of an agency action, the district court functions in an appellate capacity to apply the standards of Iowa Code Section 17A.19(8)(1991). Iowa Planners Network v. Iowa State Commerce Commission, 373 N.W.2d 106,108 (Iowa 1983). The Court has no original authority to declare the rights of the parties. Office of Consumer Advocate v. Iowa State Commerce Commission, 432 N.W.2d 148,156 (Iowa 1988). Nearly all disputed in the field of administrative law are won or lost at the agency level. Iowa Illinois Gas and Electric Co. v. Iowa State Commerce

Commission, 412 N.W.2d 600,604 (Iowa 1987). Judicial review of agency action is confined to corrections of errors of law. Farmers Coop Oil Ass'n v. Den Hartog, 475 N.W.2d 7,9 (Iowa App. 1991).

An agency action that is affected by an error of law or violative of constitutional or statutory provisions is subject to reversal under Iowa Code Section 17A.19(8)(a) and (e). Northwestern Bell Telephone Company v. Iowa Utilities Board, 477 N.W.2d 678,682 (Iowa 1991). In deciding whether the agency made errors of law, the Court gives weight to the agency's construction of its statute but is not bound by it. Woodbine Community School District v. P.E.R.B., 316 N.W.2d 862,864 (Iowa 1982). It is the duty of the Court to determine matters of law including the interpretation of a statute. Casper v. Iowa Dep't of Job Service, 321 N.W.2d 6,10 (Iowa 1982). In deciding whether an agency action is in violation of a statutory provision, the court owes the agency only limited deference. The final decision concerning matters of law rests with the court. Cobb v. Employment Appeal Board, 506 N.W.2d 445,447 (Iowa 1993).

Iowa Code Section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is supported by substantial evidence made before the agency when the record is viewed as a whole. Neil v. John Deere Component Works, 490 N.W.2d 80,82 (Iowa App. 1992). Review is not de novo. Hussein v. Iowa Meat Packing Corp., 394 N.W.2d 340 (Iowa 1986). An agency's findings of fact are binding on the Court if supported by substantial evidence. Cobb, 506 N.W.2d at 447. Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Langley v.

Employment Appeal Bd., 490 N.W.2d 300,302 (Iowa App. 1992). The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Neil, 490 N.W.2d at 82-83; Langley, 490 N.W.2d at 302. The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id.

In determining whether substantial evidence exists, the court is to consider all the evidence together, including the body of evidence opposed to the agency's review. Burns v. Board of Nursing, *supra*, 495 N.W.2d 698,699 (Iowa 1993). In considering all the evidence, including that offered in opposition to the agency's finding, the court does not compromise the limitation on its scope of review. Because review is not de novo, the court must not reassess the weight to be accorded various items of evidence. Weight of evidence remains within the agency's exclusive domain.

### **ANALYSIS**

This suit has its beginnings on June 22, 1992, when the INA filed a petition with the Board to establish a collective bargaining unit at Spencer Municipal Hospital. The INA requested a bargaining unit composed of "all registered nurses holding nonsupervisory patient care positions." In response, the Hospital contended that the most appropriate bargaining unit would be a so called wall - to - wall unit, a "combined hospital - wide unit of all professional and non-professional employees who were not otherwise excluded by statute." The Board ultimately established a collective bargaining unit composed of "all full-time and part-time registered nurses

holding non-supervisory positions in the patient care area." The parties do not contest the Board's determination of the bargaining unit.

1. Eligibility of Four Registered Nurses

The first issue before the court is whether the Board properly concluded four registered nurses (Kris VanKleek, Deb Johnson, Judy Fox and Julie Christensen) were ineligible to vote in the election because they did not hold positions in the patient care area. Petitioner contends the Board's decision that the four registered nurses were not employed in patient care areas was arbitrary and capricious and an error of law. Specifically, Petitioner contends that at an evidentiary hearing held on January 28 and 29, 1993, the parties stipulated as to which positions were in the patient care area. This stipulation, Joint Exhibit G, lists certain occupations the parties identified as a "Patient Care Job." Included in the list are the positions held by the four registered nurses whose votes were contested at the election. Petitioner contends the four registered nurses were eligible to vote in the election because the parties had previously stipulated they held positions in the patient care area. The INA and the Board disagree with Petitioner as to the effect of the stipulation.

In order to understand the stipulation, it is important to examine the context of the stipulation. The stipulation was made at an evidentiary hearing held before an ALJ concerning the appropriate bargaining unit. At the hearing, INA advocated a bargaining unit composed of all RN's holding non-supervisory care positions. The Hospital advocated for a single "wall - to - wall" unit of all bargaining eligible hospital employees or, alternatively, for only two units, a "patient care unit" and a "non-patient care unit," which together would encompass all bargaining eligible employees. At the

hearing the parties stipulated to the admission of a number of joint exhibits, including one entitled "Patient Care Job Classifications Excluding Supervisors" (Exhibit G) and another entitled "Non-Patient Job Classifications Excluding Supervisory and Confidential Jobs" (Exhibit H).

At the hearing, the purpose or effect of the stipulation was discussed by the ALJ and counsel for the Hospital:

THE ALJ: The other thing has to do with one of the joint exhibits. As you're saying, the parties have agreed on the joint exhibits as to the patient care/non-patient care employees. The parties are not -- what the exhibit shows is that these would be the employees -- if I found the patient care/non-patient care unit, these would be the employees that would be included in those units, correct?

MR. MCINTOSH: Yes.

THE ALJ: The parties are not agreeing that there is commonality of interest, or whatever, at this point?

Mr. MCINTOSH: No. No. That is, that exhibit represents the parties' agreement that if the Administrative Law Judge finds in accord with earlier decisions its patient care/non-patient care, that those classifications we would not have a separate hearing on, who would be in patient care versus non-patient care unit.

Record Vol. III, at 286-287.

The following exchange also occurred between the ALJ and counsel:

MS. LOGSDON: I see a related problem with the three RN's that sit outside of that reporting line that goes up to the director of nursing, and I think one thing that should be clarified is, on the exhibits that you have, these are stipulations that we've made that if you go with the patient care/non-patient care unit, that these would be correct.

I believe that if you were to adopt a new rule, say for example, to follow with the NLRB, some of these questions, like the utilization review person or quality assurance or skilled maintenance, may fall out in a different way.

THE ALJ: Right. I agree. And one of the -- Those are not the

only --I am not choosing just between, you know -- If I would go -- If I would go with the patient care, non-patient care unit, this is the one I would go with; right,

MR. MCINTOSH: Yes.

Record Vol. III, at 397-98.

A review of the record makes clear the purpose behind the parties stipulation to the admission of Exhibits G and H was to avoid a later hearing on which employees were employed in a patient care unit, but only if the Board determined that a patient care/non-patient care unit was appropriate. In fact, at the hearing, Susan Logsdon, counsel for INA, stated that certain job descriptions listed on Exhibit G and H (Utilization Review Coordinator, Quality Assurance Coordinator and Skilled Maintenance) "may fall out in a different way" if the ALJ determined a different bargaining unit was appropriate. That is in fact what happened. The Board ultimately decided that a patient care/non-patient care unit was inappropriate. It is clear that the stipulation entered into by the parties was a limited one. The Court concludes that the Board did not err as a matter of law in concluding the four RN's were ineligible to vote at the election.

## 2. Mootness

Questions of representation are determined on the basis of a simple majority of valid votes cast. See Iowa Code § 20.15(2). The outcome of the election was 54-49 in favor of INA. The Board later determined that 2 more employees who cast contested ballots should have been allowed to vote in the election. With the addition of these two ballots, the outcome of the election was potentially 54-51 in favor of INA. On appeal to this court, the Hospital challenged both the Board's conclusion

that five employees were ineligible to vote in the election and the voiding of a ballot which was improperly marked. As discussed above, the Court concludes that the Board's decision that four RN's were ineligible to vote was proper. Therefore, even if the Court would conclude that the Board erred in sustaining the challenge to Jan Boge's ballot and in not concluding the voided ballot should be counted as a vote against INA representation, the vote count would still be no better than 54-53 in favor of INA representation.

In view of the court's decision that the Board properly concluded that the four contested RN's were ineligible to vote in the election, the Court need not address any remaining issues in order to affirm the Board. Those two issues have become moot.

#### **RULING**

**IT IS THEREFORE ADJUDGED, ORDERED AND DECREED** that the agency's decision is affirmed

Ordered this 8<sup>th</sup> day of March, 1995

Donna L. Paulsen

DONNA L. PAULSEN, JUDGE  
FIFTH JUDICIAL DISTRICT OF IOWA